

## LICENSE AGREEMENT

This Agreement is made by DUWAMISH SHIPYARD, INC., a Washington corporation ("DSI"), and ALASKA MARINE LINES, INC., a Washington corporation ("AML").

### RECITALS

A. AML owns the real property legally described on Exhibit A attached (the "AML Property"), which consists of, among other things, a graving dock ("Graving Dock") and moorage ("Moorage") on the Duwamish Waterway, the locations of which are depicted on Exhibit B attached. AML also owns a Whirley crane ("AML Crane") located adjacent to the Graving Dock.

B. DSI owns property adjacent to the AML Property. DSI wishes to use the Graving Dock, Moorage, and the AML Crane. In connection with its use of the Graving Dock, DSI will operate the Colby crane ("Colby Crane") located on that portion of the AML Property depicted on Exhibit B (the "Crane Parcel"). The Crane Parcel, AML Crane, Moorage and Graving Dock are collectively referred to as the "Facilities."

C. In addition, DSI owns the wooden dock located in the area depicted on Exhibit B attached (the "Dock") and under Agreement dated February 1, 1983 between DSI and Wright Schuchart, Inc. has a ten (10) year permit ("Permit") to use the land beneath the Dock and the adjacent run out area for DSI's marine railway ("Marine Railway").

In consideration of the benefits to be derived by the parties from this Agreement it is agreed as follows:

### AGREEMENT

#### 1. Crane Parcel License and Crane Rental.

1.1 AML grants to DSI a nonexclusive license to enter, occupy and use the Crane Parcel on an "as available" basis solely for the purpose of operating and maintaining the Colby Crane (including the track on which it operates), currently located there. DSI warrants and represents that it either owns the Colby Crane or has acquired the legal right to use the Colby Crane. DSI shall maintain the Crane Parcel and the Colby Crane in a clean, safe condition in accordance with all applicable laws, ordinances and regulations. DSI shall enter the Crane Parcel from its property. DSI shall not access the Crane Parcel or the Facilities over the AML Property without first obtaining in each instance AML's written consent. DSI shall remove or cause to be removed the Colby Crane (including all related DSI equipment and improvements) within twenty (20) days of termination of this

license as provided in Section 5 and shall leave the Crane Parcel in a neat and clean condition. If DSI fails to do so, AML shall have the right to make such removal at DSI's expense which shall be payable on demand.

1.2 AML shall be entitled to use the Colby Crane as available at an hourly charge of \$75.00 per hour. AML must provide a qualified operator and will operate the crane in a safe manner in compliance with applicable rules and regulations.

1.3 DSI shall be entitled to use the AML Crane as available at an hourly charge of \$75.00 per hour. DSI must provide a qualified operator and will operate the crane in a safe manner in compliance with applicable rules and regulations.

## 2. Dock and Marine Railway License.

AML grants DSI a nonexclusive license to use the land beneath the Dock and the land adjacent to the Dock for the purpose of operating a Marine Railway and Dock. In using the Dock, DSI shall keep it in neat and clean condition. All refuse shall be removed promptly and disposed of in compliance with applicable laws. DSI shall remove or cause to be removed the Dock and the Marine Railway (including all related DSI equipment and improvements) within twenty (20) days of termination as provided in Section 5 of this License and shall leave the AML Property in a neat and clean condition. If DSI fails to do so, AML shall have the right to make such removal at a reasonable cost after giving DSI written notice of its intent to do so and of the estimated cost of removal which shall be at DSI's expense and which shall be payable on demand.

## 3. Graving Dock and Moorage License.

3.1 AML grants DSI a nonexclusive license to use Graving Dock and Moorage on an "as available" basis for the purpose of mooring DSI customers' vessels for work afloat or for working on such vessels in the dry. In using the Graving Dock and Moorage, DSI shall keep it in neat and clean condition. All refuse shall be removed promptly and disposed of in compliance with applicable laws.

3.2 Moorage and dockage charges shall be paid by DSI for the use permitted in Section 3.1 at the rates set forth in Exhibit C. Charges shall be based on a five (5) day per week rate; however, if work is performed on vessels on more than five (5) days per week, the additional work days shall be charged. In the event DSI is unable to perform work on vessels because of a labor strike, AML agrees to waive all charges for the first ten (10) days of the strike and charge only one-half the normal rate for the next twenty (20) days of the strike. After thirty (30) days, the vessel must be moved or DSI will be charged the full rate. Payments by DSI shall be due within thirty (30) days of

invoice date. All payments by DSI under this Agreement shall be made without discount or offset at AML's address as set forth herein.

4. General Limitations on License.

4.1 The licenses granted by this Agreement are personal to DSI and shall not inure to its successors or assigns. DSI agrees it shall not assign, encumber or pledge as security its rights under this agreement and shall not permit any third person or entity to exercise its rights under this agreement.

4.2 DSI agrees it does not and shall not claim at any time any interest or estate of any kind whatsoever in the Facilities by virtue of this Agreement or DSI's occupancy or use of the Facilities.

5. Duration.

5.1 This Agreement can be terminated by either party at any time by not less than two hundred seventy (270) days advance written notice addressed to the other party at the address set forth under the signature lines or at such other address in the State of Washington designated by a party in writing to the other party. This 270 day termination period is intended to allow DSI adequate time to remove the Dock, Marine Railway and Colby Crane, and to honor its commitment to customers requiring use of the Facilities, in consideration of DSI's release of its rights under the Permit.

5.2 The licenses granted in this Agreement shall terminate automatically at AML's election upon DSI making a general assignment for the benefit of creditors or becoming the subject of any bankruptcy or receivership proceeding.

5.3 The licenses granted in this Agreement shall also terminate automatically at AML's election upon a material default by DSI in the substantial performance of this Agreement, twenty (20) days after written notice of such default to DSI and DSI's failure to cure the same.

6. Limitation of Liability.

6.1 AML, its affiliates, employees, officers, directors, shareholders and agents shall not be responsible for any loss, damage, injury or death arising from any act or omission of DSI, on AML Property or in the performance of this Agreement.

6.2 The parties recognize, acknowledge and agree that DSI, as a long term neighbor of the premises and user of the Facilities is more knowledgeable than AML about the Facilities and their condition. Accordingly, DSI accepts the Facilities "AS

IS," acknowledges notice that AML shall not repair or maintain the Facilities during DSI's use of the same, and agrees that any repair or maintenance of the Facilities performed by DSI shall be at its sole cost and expense. AML makes no express warranty, and expressly disclaims any implied or statutory warranty regarding the premises, improvements or equipment subject to this Agreement or of any other nature whatsoever, including fitness for a particular purpose, or safety. AML, its affiliates, employees, officers, directors, shareholders and agents shall have no liability for any incidental or consequential damages whatsoever.

7. Indemnity.

7.1 DSI shall protect, indemnify, defend and hold AML harmless from all claims, demands, actions, causes of action or liabilities of any nature whatsoever (including costs and attorneys' fees incurred by AML in defending against any such matter or in enforcing this indemnity provision) which arise out of or in connection with (a) DSI's failure to perform or satisfy any covenant or condition required by the terms of this Agreement to be performed or satisfied by DSI, (b) negligent acts or omissions or other fault of DSI, or (c) negligent acts or omissions or other faults of DSI's clients, customers or invitees. This indemnity shall survive termination of this Agreement, but shall be subject to applicable statutes of limitation.

7.2 AML shall protect, indemnify, defend and hold DSI harmless from all claims, demands, actions, causes of action and liabilities of any nature whatsoever (including costs and attorneys' fees incurred by DSI in defending against all such liabilities or in enforcing this indemnity provision) which arise out of or in connection with (a) AML's use of the Colby Crane pursuant to Section 1 above unless attributable to the negligent act or omission of other parties or the physical condition of the Colby Crane, or (b) AML's use of the Dock, Marine Railway or the Facilities, or such use by AML's licensees, clients, customers or invitees. This indemnity shall survive termination of this Agreement, but shall be subject to applicable statutes of limitation.

8. Insurance.

8.1 DSI shall obtain and maintain in full force and effect throughout the term of this Agreement, at its sole cost and expense (including the cost of any deductibles), the following insurance:

a. Ship Repairer's Legal Liability Insurance, with limits of not less than \$5,000,000 applicable to any one incident or occurrence.

b. Water and Air Pollution Liability Insurance, if a DSI or DSI customer vessel or anything aboard it contains oil or hazardous substances, insuring (i) costs of cleanup in the event of spill or leakage, with a limit sufficient to meet any minimum amount required by municipal, state or federal or any other recognized governing authority, and (ii) liability for third-party claims in the event of a spill or leakage, with a minimum limit of \$2,500,000 applicable to any one accident or occurrence.

c. Workers' Compensation Insurance, including Longshore and Harborworkers' Act coverage, with limits sufficient to meet any statutory requirements, and Employer's Liability Insurance with limits of not less than \$1,000,000 for any one occurrence.

d. Commercial General Liability and Automobile Liability Insurance, with limits of not less than \$5,000,000 per accident or occurrence as to bodily injury or property damage. Commercial General Liability coverage shall include, but not be limited to, blanket contractual and broad form property damage endorsements.

e. Property Damage Insurance to the full insurable value on any DSI machinery or equipment.

f. All of the above policies, except Workers' Compensation, shall be specifically endorsed to name AML and its affiliates as additional insured with waiver of subrogation for the period covered by this Agreement, and shall provide that where DSI is at fault its insurance will be primary in the event risks insured thereby are covered by other insurance.

g. Before the use of the Facilities under this Agreement, DSI shall furnish AML with certificates evidencing compliance with this Section 8.1. No act of AML shall constitute a waiver of compliance with this Section 8.1 by DSI.

8.2 AML shall obtain and maintain in full force through the term of this Agreement, including the cost of any deductibles, the following insurance:

a. Workers' Compensation Insurance, including Longshore and Harborworkers' Act coverage, with limits sufficient to meet any statutory requirements, and Employer's Liability Insurance with limits of not less than \$1,000,000 for any one occurrence.

b. Commercial General Liability and Automobile Liability Insurance, with limits of not less than \$5,000,000 per accident or occurrence as to bodily injury or property damage. Commercial General Liability coverage shall include, but not be

limited to, blanket contractual and broad form property damage endorsements.

c. Property Damage Insurance to the full insurable value on any AML machinery or equipment.

d. All of the above policies, except Workers' Compensation, shall be specifically endorsed to name DSI and its affiliates as additional insured with waiver of subrogation for the period covered by this Agreement, and shall provide that where AML is at fault its insurance will be primary in the event risks insured thereby are covered by other insurance.

e. AML shall furnish DSI with a certificate evidencing compliance with this Section 8.2.

9. Presence and Use of Hazardous Substances.

9.1 The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes" or "solid waste" in any Environmental Law and the Hazardous Materials Transportation Act; (b) petroleum products and byproducts; (c) asbestos; (d) polychlorinated biphenyls; (e) chlorinated solvents and (f) urea formaldehyde. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

9.2 DSI shall notify AML prior to introducing on or around the Facilities or the AML Property, Hazardous Substances for use, disposal, treatment, generation, storage or sale.

9.3 With respect to any Hazardous Substance, DSI shall:

a. Comply promptly, timely and completely with all governmental requirements for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers;

b. Submit to AML true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;

c. Within five (5) days of AML's request, submit written reports to AML regarding DSI's use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to AML of DSI's compliance with the applicable governmental regulation;

d. Allow AML or AML's agents or representatives access to the Dock, Marine Railway and Facilities as they deem necessary to evaluate DSI's compliance with all applicable governmental regulations regarding Hazardous Substances; and

e. Comply with all Environmental Laws regarding the proper and lawful use, sale, transportation, generation, treatment, storage and disposal of Hazardous Substances.

9.4 In the event DSI fails to comply with any Environmental Law in connection with using the Facilities, DSI shall reimburse AML on demand for all such costs incurred.

9.5 DSI shall obtain and maintain all permits necessary to allow the conduct of its activity in connection with using the Facilities, including, without limitation, NPDES permits as required by the Clean Water Act.

9.6 In addition to DSI's other obligations under this Agreement or at law or in equity, DSI shall indemnify, protect, defend and hold harmless AML, its affiliates, directors, officers, employees, contractors, agents, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and actual litigation costs) directly or indirectly arising out of or attributable to (a) the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under or about the AML Property (or off the AML Property which affects AML or the AML Property) caused by or attributable to DSI, whether occurring in the past, present or future, or (b) a breach by DSI of any representation, warranty, covenant or agreement contained in this Agreement. This indemnity shall cover, without limitation, (i) all foreseeable consequential damages caused by or attributable to DSI, and (ii) the costs of any required or necessary repairs, cleanup, remediation, or detoxification of the AML Property caused by or attributable to DSI. This indemnity shall survive termination of this Agreement but shall be subject to applicable statutes of limitation.

#### 10. Cancellation of Prior Permit and Agreement.

DSI previously entered into the Permit and that certain Master Moorage and Graving Dock Rental Agreement dated January 22, 1987 with General Construction Company, a division of Wright Schuchart, Inc. ("Agreement") concerning use of the Facilities. AML and DSI agree that the Permit and Agreement are hereby terminated. DSI represents and warrants that DSI has no further rights with respect to use of the Facilities pursuant to that Agreement, that DSI has no further rights under the Permit, and that the Permit and Agreement are of no further force and effect.

11. Repairs and Improvements to Facilities.

DSI will be available to make repairs or improvements to the Facilities by agreement between the parties.

12. General Provisions.

12.1 All notices and communications required by the terms of this Agreement shall be in writing and addressed to the respective address of the other party as set forth in this Agreement or such other address of which the party seeking to give notice has been advised in writing.

12.2 This instrument and the attached exhibits constitutes the entire agreement between the parties. Neither party is relying or may rely on any other written oral collateral, prior or contemporaneous agreement, assurance, representation or warranty. No modification of this instrument shall be implied in law, equity or admiralty, nor shall any express modification be effective unless in writing signed by the party to be charged.

12.3 In the event payment is not made when due, AML shall be entitled to charge to and recover from DSI all costs and expenses, including reasonable attorneys' fees, incurred in collecting the overdue amount. All sums due and to become due under this Agreement, if unpaid when due, shall, if permitted by law, bear interest at the rate of twelve percent (12%) per annum from and after the date upon which the same shall have become due and payable pursuant to the terms of this Agreement until paid in full. If the aforesaid rate is not permitted by the law of the State of Washington or of the United States, whichever is controlling, the interest rate applicable to delinquent payments shall be the maximum allowed to be agreed to under the law of the State or of the United States, whichever is controlling.

12.4 In the event payment is not made when due, DSI shall be entitled to charge to and recover from AML all costs and expenses, including reasonable attorneys' fees, incurred in collecting the overdue amount. All sums due and to become due under this Agreement, if unpaid when due, shall, if permitted by law, bear interest at the rate of twelve percent (12%) per annum from and after the date upon which the same shall have become due and payable pursuant to the terms of this Agreement until paid in full. If the aforesaid rate is not permitted by the law of the State of Washington or of the United States, whichever is controlling, the interest rate applicable to delinquent payments shall be the maximum allowed to be agreed to under the law of the State or of the United States, whichever is controlling.

12.5 Captions used in this Agreement are for convenience of reference only and shall have no force or effect



or legal meaning in the construction or enforcement of this Agreement.

12.6 This Agreement shall be for the benefit of and be binding upon both parties, their successors and permitted assigns.

12.7 Any suit, action or proceeding brought by either party in consequence of or to enforce any term or provision of this Agreement shall be commenced in the King County Superior Court of the State of Washington or the United States District Court for the Western District of Washington at Seattle, Washington, as appropriate. DSI and AML submit to the jurisdiction of the courts of the State of Washington and the United States District Court for the Western District of Washington and consent to service of process by certified mail, return receipt requested, to the address shown below the signature lines or such other address in the State of Washington designated by a party in writing to the other party. The prevailing party in any such suit, action or proceeding shall be entitled to recover its costs of suit and reasonable attorneys' fees.

12.8 The interpretation of this Agreement and of the rights and obligations of the parties in law, equity or admiralty shall be governed by the substantive law of the State of Washington and the general maritime law of the United States, insofar as applicable.

12.9 If a term or provision, or any part of any term or provision, of this Agreement is held by any court or other competent authority to be illegal or unenforceable, the remaining terms, provisions, rights and obligations shall not be affected.

12.10 The persons signing below warrant (i) having read and understood the above provisions, and (ii) having been authorized to sign this Agreement.

12.11 Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement  
as of the 16<sup>th</sup> day of JUNE, 1989.

DSI:

AML:

DUWAMISH SHIPYARD, INC.

ALASKA MARINE LINES, INC.

By David M. Larsen  
Its president

By Jan Sae Sykkus  
Its Vice President

Address:

Address:

5658 W. Marginal Way S.W.  
Seattle, WA 98106  
Attn: David M. Larsen

P.O. Box 3757  
Seattle, WA 98124  
Attn: Christel Holm

EXHIBIT A

PROPERTY DESCRIPTION

A PORTION OF GOVERNMENT LOT 7, SECTION 19, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THAT PORTION OF SAID GOVERNMENT LOT 7 LYING WEST OF THE CENTERLINE OF DUWAMISH WATERWAY AND NORTH OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE CENTER OF SAID SECTION 19; THENCE ALONG THE WEST LINE OF SAID GOVERNMENT LOT 7, SOUTH  $00^{\circ}-43'-34''$  EAST A DISTANCE OF 1,014.78 FEET TO THE POINT OF BEGINNING; THENCE ALONG A LINE BEING 1,014.42 FEET WHEN MEASURED PERPENDICULAR TO THE NORTH LINE OF SAID GOVERNMENT LOT 7 SOUTH  $89^{\circ}-12'-00''$  EAST A DISTANCE OF 801.96 FEET, TO THE WEST RIGHT-OF-WAY LINE OF SAID DUWAMISH WATERWAY; THENCE PERPENDICULAR TO THE SAID WEST RIGHT-OF-WAY LINE NORTH  $71^{\circ}-32'-12''$  EAST A DISTANCE OF 250.0 FEET TO THE POINT OF ENDING.

EXHIBIT B

CRANE  
PARCEL  
COLBY CRANE

GRAVING DOCK

PILE CRANE

EXISTING  
CONC. PAD

STORAGE  
BUILDING

EXISTING  
WOOD WHARF  
MOORAGE

AMISH

## EXHIBIT C

### GRAVING DOCK, MOORAGE AND CRANE RENTAL RATES

#### GRAVING DOCK RATES:

<u>Barge Length</u>	<u>Docking Day</u>	<u>Working Lay Day</u>	<u>Non-working Lay Day</u>
Under 200 ft.	\$300.00	\$300.00	0
201-250 ft.	\$400.00	\$400.00	0
251-300 ft.	\$500.00	\$500.00	0
301-350 ft.	\$600.00	\$600.00	0
351-400 ft.	\$700.00	\$700.00	0

#### Definitions:

1. Docking Day: The day (24 hour period) that a vessel is actually brought into the graving dock, water is pumped out of the graving dock and vessel is ready to be inspected or repaired.
2. Working Lay Day: A day (24 hours period) that the vessel is available to be worked on by DSI. This means Monday, Tuesday, Wednesday, Thursday and Friday. These days are charged even if DSI elects not to work on the vessel. The day that the vessel is undocked is charged as a lay day.
3. Non-working Lay Day: A day (24 hour period) when the vessel is in the graving dock but no work is scheduled. This means Saturdays, Sundays and holidays observed by DSI. These days are not charged unless DSI actually works on the vessel; then they are charged as working lay days.

#### MOORAGE RATES:

Moorage (Timber Dock Face) Rate based  
on overall length of vessel \$ .70 per foot per day

#### CRANE RENTAL RATES:

AML Crane Rental, unoperated, 1 hour minimum \$75.00 per hour  
DSI Colby Crane Rental, unoperated, 1 hour minimum \$75.00 per hour

#### ADDITIONAL CONDITIONS:

1. All electrical service costs for pumping, lighting, crane operation, welding, etc., for DSI's account.
2. All personnel shall access from DSI's property, unless otherwise arranged.
3. DSI will furnish their own pumps.
4. AML may, at its option, consent to special rates to be negotiated for individual jobs.